

1 Michael C. Ormsby  
2 United States Attorney  
3 Eastern District of Washington  
4 Russell E. Smoot  
5 Assistant United States Attorney  
6 Post Office Box 1494  
7 Spokane, WA 99210-1494  
8 Telephone: (509) 353-2767

6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA, )

9 Plaintiff, )

10 vs. )

11 JOSEPH JEFFEREY BRICE, )

12 Defendant. )

11-CR-00075-LRS

United States' Response to  
Defendant's Renewed Motion  
for Bill of Particulars

13  
14 Plaintiff, United States of America, by and through Michael C. Ormsby,  
15 United States Attorney for the Eastern District of Washington, and Russell E.  
16 Smoot, Assistant United States Attorney for the Eastern District of Washington,  
17 respectfully submits the United States' Response to Defendant's Renewed Motion  
18 for Bill of Particulars.

19 RESPONSE

20 On December 20, 2011, the Defendant filed a Motion for Bill of Particulars.  
21 See ECF Doc. 164<sup>1</sup>. On January 6, 2012, the United States responded. See ECF

---

24  
25 <sup>1</sup>The pleading was not publically filed until January 23, 2012, under Docket  
26 Entry No. 164.

1 Doc. 123. The Defendant replied. *See* ECF Doc. 166.<sup>2</sup> This court denied the  
 2 Defendant's Motion for a Bill of Particulars with leave to renew. *See* ECF Doc.  
 3 173.

4 On March 1, 2012, the Defendant filed a Renewed Motion for a Bill of  
 5 Particulars. *See* ECF Doc. 190. The United States hereby responds.

6 **I. United States' Response to Defendant's Initial Bill of Particulars:**

7 Rather than incorporate the United States' initial response by reference, the  
 8 United States sets forth a full recitation of its initial response as follows:

9 I. Legal Authority Re: Bill of Particulars:

10 The Federal Rules of Criminal Procedure states that a court  
 11 may direct the government to file a bill of particulars. Fed. R. Crim.  
 12 P. 7(f). A bill of particulars has three purposes: "to apprise the  
 13 defendant of the specific charges being presented so as to minimize  
 14 surprise at trial, to aid the defendant in preparing for trial, and to  
 15 protect against double jeopardy." United States v. Burt, 765 F.2d  
 16 1364, 1367 (9<sup>th</sup> Cir. 1985) (citing United States v. Long, 706 F.2d  
 17 1044, 1054 (9<sup>th</sup> Cir. 1983)).

18 A defendant is not entitled to a bill of particulars as a matter of  
 19 right. Wong Tai v. United States, 273 U.S. 77, 82 (1927). The  
 20 purpose of a bill of particulars is served if the indictment itself  
 21 provides sufficient details of the charges and if the Government  
 22 provides full discovery to the defense. United States v. Mitchell, 744  
 23 F.2d 701, 705 (9<sup>th</sup> Cir. 1984) (citing United States v. Griesse, 597 F.2d  
 24 1170, 1180 (9<sup>th</sup> Cir. 1979), cert. denied, 444 U.S. 979 (1979)). A

---

25 <sup>2</sup>*See* Footnote 1, *supra*.

1 defendant "is not entitled to know all the evidence the government  
2 intends to produce but only the theory of the government's case."  
3 United States v. Ryland, 806 F.2d 941, 942 (9<sup>th</sup> Cir. 1986), cert.  
4 denied, 481 U.S. 1057 (1987).

5 II. Superseding Indictment and Comprehensive Discovery Has  
6 Been Provided:

7 In this case, the Superseding Indictment provides a "plain,  
8 concise, and definite written statement of the essential facts  
9 constituting the offense[s] charged." See Fed. R. Crim. P. 7(c).  
10 Furthermore, the United States provided significant discovery,  
11 including search warrant affidavits, law enforcement reports, and  
12 transcripts of grand jury testimony. Therefore, the United States  
13 submits that the purpose served by a bill of particulars has been  
14 served and respectfully requests this Court to deny the Defendant's  
15 motion.

16 *See* ECF Doc. 123.

17 **II. Additional Information:**

18 In addition to the above-referenced "discovery, including search warrant  
19 affidavits, law enforcement reports, and transcripts of grand jury testimony," the  
20 United States filed a First Trial Memorandum Re: Evidence Admissible Pursuant  
21 to Federal Rules of Evidence 401, 402, 404(b), 801(d)(1)(A) and Applicable Case  
22 Law, *see* ECF Doc. 182 (filed Feb. 17, 2012), and a Second Trial Memorandum  
23 Re: Summary of Factual Basis for Charges. *See* ECF Doc. 185 (filed Feb. 29,  
24 2012). In terms of the Second Trial Memorandum, the United States set forth a  
25 specific articulation of facts related to Count One, Count Two, and Count Three.

1 While the Second Trial Memorandum disclaims that “the United States reserves  
2 the right to supplement and/or amend this Second Trial Memorandum through  
3 subsequent pleadings and oral argument[,]” it does include approximately 12  
4 pages of text referencing the Defendant’s conduct from December 2010 through  
5 his arrest on May 9, 2011, *see* ECF Doc. 185, pgs, 26-38, which is the time-period  
6 alleged in Count Three.

7       Given that the Defendant "is not entitled to know all the evidence the  
8 government intends to produce but only the theory of the government's case[,] "  
9 United States v. Ryland, 806 F.2d 941, 942 (9<sup>th</sup> Cir. 1986), cert. denied, 481 U.S.  
10 1057 (1987), (cited in ECF Doc. 123 and included *supra*), the United States  
11 respectfully submits that it *has* provided a *defacto* bill of particulars through its  
12 early disclosure of a non-required trial memoranda. In short, the United States has  
13 gone beyond the mere threshold of required discovery in advising the Defendant  
14 relevant to the theory of its case prior to trial. As such, the practical effect of  
15 requiring the United States to provide a “bill of particulars” would simply be to  
16 file the same Second Trial Memorandum under a different caption and docket  
17 number.

### 18 **III. Conclusion:**

19       To restate, the United States provided significant discovery, including  
20 search warrant affidavits, law enforcement reports, and transcripts of grand jury  
21 testimony. Additionally, the United States has filed trial memorandums relevant  
22 to evidence and facts. *See* ECF Docs. 182, 185. Therefore, the United States

23 //

24 //

1 respectfully submits that the purpose of a bill of particulars has been served and  
2 respectfully requests this Court to deny the Defendant's motion

3 DATED March 13, 2012.

4 Michael C. Ormsby  
5 United States Attorney

6 *s/Russell E. Smoot*

7 Russell E. Smoot  
8 Assistant United States Attorney  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 I hereby certify that on March 13, 2012, I electronically filed the foregoing  
2 with the Clerk of the Court using the CM/ECF System which will send  
3 notification of such filing to the following, and/or I hereby certify that I have  
4 mailed by United States Postal Service the document to the following non-  
5 CM/ECF participant(s):

6  
7 Matthew Campbell  
8 Federal Defenders  
9 10 North Post Street, Suite 700  
10 Spokane, WA 99201

11 *s/Russell E. Smoot*

12 Russell E. Smoot  
13 Assistant United States Attorney  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26